

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Kyle Gotshalk, *et al.*,
Plaintiffs
v.
Peter Hellwig, *et al.*,
Defendants

2:13-cv-00448-JAD-NJK
Order Denying Without Prejudice
Motion for Default Judgment
[ECF No. 99]

In this securities action, Kyle and Leonard Gotshalk, Clinton Hall, LLC, Richard Maher, and Patrick O'Loughlin sue Peter Hellwig, Anthus Life Corp., and Stakool Inc., alleging that Hellwig and his alter-ego companies defrauded plaintiffs of their shares and control of defendant-company Stakool.¹ Defaults have been entered against all defendants,² and plaintiffs now move for default judgment against them. Because plaintiffs failed to address the *Eitel* factors in their motion, I deny the motion without prejudice.³

Discussion

When the clerk has entered a default against a party, Rules 54(b) and 55 of the Federal Rules of Civil Procedure permit the court to enter a default judgment.⁴ The Ninth Circuit in *Eitel v. McCool* set forth seven factors that govern the district court's decision whether to enter a default judgment: (1) potential prejudice to the plaintiff; (2) the merits of the plaintiff's substantive claim; (3) the sufficiency of the complaint; (4) the amount of money at stake in the action; (5) the potential disputes as to material facts; (6) whether the default was due to excusable neglect; and (7) the strong

¹ ECF No. 4.

² ECF Nos. 26, 94.

³ I find this motion suitable for disposition without oral argument. L.R. 78-1.

⁴ *Eitel v. McCool*, 782 F.2d at 1470, 1471 (9th Cir. 1986); *Trustees of the Bricklayers & Allied Craftworkers Local 13 Defined Contribution Pension Trust for S. Nev. v. Tumbleweed Dev., Inc.*, 2013 WL 143378, at *2 (D. Nev. Jan. 11, 2013) (citing *Eitel*).

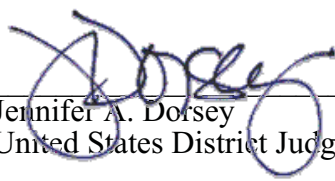
1 federal policy favoring adjudications on the merits.⁵

2 Except for the amount of money at stake and the merits of some of their substantive claims,
3 plaintiffs' motion does not address the *Eitel* factors. Plaintiffs have thus left me without the
4 guidance and information I need to determine whether a default judgment is warranted. I therefore
5 deny plaintiffs' motion without prejudice to their ability to file a new motion that addresses the *Eitel*
6 factors and explains why these factors warrant the default judgment that plaintiffs request.⁶

7 **Conclusion**

8 Accordingly, IT IS HEREBY ORDERED that **plaintiffs' motion for default judgment**
9 **[ECF No. 99] is DENIED without prejudice.**

10 Dated this 23rd day of June, 2016.

11 
12 Jennifer A. Dorsey
13 United States District Judge
14
15
16
17
18
19
20
21
22
23

24 ⁵ See *Eitel*, 782 F.2d at 1471–72.

25
26 ⁶ See, e.g., *Rimlinger v. Shenyang 245 Factory*, 2014 WL 2527147 (D. Nev. June 4, 2014); *Neumont*
27 *Univ., LLC v. Little Bizzy, LLC*, 2014 WL 2112938 (D. Nev. May 20, 2014); *U.S. S.E.C. v.*
28 *Brandonisio*, 2013 WL 5371626 (D. Nev. Sept. 24, 2013); *Trustees of Teamsters Local 631 Sec.*
Fund for S. Nev. v. Knox Installation-Dismantling and Services, 2013 WL 4857897 (D. Nev. Sept. 9,
2013).